

## **FINAL STATEMENT OF REASONS (FSOR)**

This Final Statement of Reasons (FSOR) has been prepared by the Office of Small Business and DVBE Services (OSDS), Procurement Division, Department of General Services as part of the DVBE rulemaking process. It follows upon the Initial Statement of Reasons (ISOR) dated June 16, 2018 (incorporated by reference) specific to the regulatory adoption published in the California Regulatory Notice Register on June 29, 2018 (Register 2018, No. 26-Z, pages 975-978). A mandatory initial 45-day public comment period commenced June 29<sup>th</sup> and closed August 13<sup>th</sup>, 2018.

During this period, one individual submitted a single comment to DGS and while considered, it was not sufficient or compelling enough to justify changing or adding to the regulatory content as originally posed and published.

### **Post Notice Modifications or Addenda to the ISOR:**

- There are no post-notice modifications or additions to information contained in the ISOR. No new technical, theoretical or empirical material or document has been additionally relied upon or should have been made available for public review prior to the close of the public comment period. Anticipated fiscal impacts remain negligible, as already documented.
- The initial determination contained in the published Notice of Proposed Rulemaking (page 977) regarding whether the regulations impose a mandate upon local agencies/school districts is unchanged: There is no such mandate imposition.
- Non-duplication: Any duplication or overlap cited as “authority” or “reference” for the proposed regulation is necessary to satisfy the “clarity” standard of GC 11349.1(a)(3).

### **Public Comment Overview:**

Solicitation for public comment, in addition to publication in the Regulatory Notice Register, entailed a public hearing on Monday August 13<sup>th</sup>, 2018 internet posting, direct electronic notification of more than 18,000 certified firms, broadcast subscribers and contracting agents, Advisory Council members and DVBE Advocates, along with public counter availability. This was preceded by several informal opportunities that afforded select stakeholders a preview the proposed changes. Finally, in accordance with the provisions of Military and Veterans Code (MVC) 999.5(a), DGS closely coordinated with the Department of Veteran Affairs (CalVet) Program Advocate in the development and adoption of these rules, including appearing before the CalVet DVBE advisory body for the purpose of reporting on the progress of adoption.

### **Summary of and Responses to Comment Received during the Initial 45-day period:**

Comment: Candace Marty – Department of Health Care Services (7/02/2018):

I’m wondering how this will affect DHCS’s contracting with DVBEs. Can you shed any light on this for me so I can let the programs know?

RESPONSE: As ISOR page 5 explains, the existing ability of the highest ranking executive officer or designee’s ability to exempt contracts from the DVBE incentive is being preserved. However, electing to exempt contracts from the incentive option will not be connected to whether DVBE participation goals in the past have been met or exceeded, as text strikeout depicts. Instead, the discretion to exempt will be for any documented reason specific to that solicitation/contract, only if exemptions do not interfere with or prevent achievement of the awarding department’s DVBE participation goal. This particular approach has the added advantage of preserving, for cost containment purposes, the existing option of exempting individual contracts from incentive consideration whenever conducting competitive solicitations under a department’s approved purchasing authority.

So, essentially the amended rule does not directly affect DVBE contracting mechanics. The State Contracting Manual (SCM) sets forth detailed instructions, tables and operational guidance on how DVBE incentives are to be taken into account in the course of the awarding of contracts by State Agencies (see ISOR page 1). The rule change just makes the exemption basis to be reasons specific to the contract the agency wants to exempt, and not because the agency met the DVBE goals for the past 2 out of 3 years. A reasonable alternative to the rule being amended, objection to its adoption or recommendation for specific content change has not been posed by the commenter, therefore accommodation other than the explanation provided is not required.

**Text Formatting and other Non-Substantive Adjustments without regulatory effect:**

Formatting errors, word order difficulties or inadvertent omission of existing unchanged text has been corrected throughout the final text and all are considered non-substantive changes because they are without regulatory effect. Per publisher practice and formatting convention, previously indicated statutory subdivisions, commas falling before “and” or comma omissions in the authority and reference note citations, have been removed (or added, as needed) throughout, also without regulatory effect.

**Alternatives Determination:**

The Department finds, as GC 11346.5(a)(10) requires be stated, that no reasonable alternative considered by the agency, including those posed during GC 11346(b) and GC 11346.45(a) opportunities, were more effective in carrying out the purpose for which the regulation was proposed, would have been as effective and less burdensome to affected private persons than the adopted regulation, or would have been more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. There were no comments submitted in the course of public comment, the adoption of which would have lessened any adverse economic impact on small businesses. All other requirements of GC 11346.9 have been satisfied in the content of the Notice of Proposed Action on Regulations published in the California Regulatory Notice Register on June 29, 2018, incorporated by reference.